

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96-112

In the Matter of)
)
Implementation of Sections 202(f), 202(i) and 301(i))
of the Telecommunications Act of 1996) CS Docket No. 96-56
)
)
Cable Television Antitrafficking, Network Television,)
and MMDS/SMATV Cross ownership Rules)

ORDER

Adopted: March 15, 1996

Released: March 18, 1996

By the Commission:

I. INTRODUCTION

1. In this *Order*, we amend certain of the Commission's rules relating to cable television ownership to conform them to changes in the Communications Act enacted on February 8, 1996, in the Telecommunications Act of 1996 ("1996 Act").¹

II. TELEVISION BROADCAST NETWORK - CABLE CROSS OWNERSHIP

2. Section 76.501 of the Commission's rules limits the extent to which cross ownership is permitted between cable television systems and television broadcast networks.² Under this rule, network-cable cross ownership is allowed if such combinations do not exceed 10% of homes passed by cable nationwide, and do not exceed 50% of homes passed by cable within an area of dominant influence (ADI).

3. Section 202(f) of the 1996 Act provides as follows:

(f) Cable Cross Ownership.--

(1) Elimination of restrictions. -- The Commission shall revise section 76.501 of its regulations (47 C.F.R. 76.501) to permit a person or entity to own

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

² The rules were revised and their history is discussed in the Commission's *Report and Order* in MM Docket No. 82-434, 7 FCC Rcd 6156 (1992).

or control a network of broadcast stations and a cable system.

4. Accordingly, we are amending Section 76.501 as reflected in the Appendix to permit a person or entity to own or control a network of broadcast stations and a cable system.³

III. MMDS/SMATV - CABLE CROSS OWNERSHIP

5. Section 613(a)(2) of the Communications Act, as adopted in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁴ made it unlawful to hold a license for a multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from a franchised cable service, in any portion of the franchise area served by the cable operator's cable system. Rules implementing this restriction were adopted by the Commission and appear in Sections 21.912 and 76.501 of the rules.⁵ Section 202(i) of the 1996 Act adds the following to the existing restriction to provide that the Commission shall not apply the requirements of subsection 613(a):

to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l).

6. Accordingly, as reflected in the Appendix, we amend the applicable Commission rules to conform them to the new statutory language

IV. ANTITRAFFICKING REGULATION

7. Section 617 of the Communications Act, as adopted in the 1992 Cable Act, restricted the ability of a cable operator to sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of the system. Rules implementing the three-year holding requirement were adopted by the

³ Section 202(f)(2) provides that the Commission "shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system described in paragraph (1)." We will monitor the reponse to the rule changes set forth in the appendix to determine whether additional rule changes are necessary to establish the regulatory safeguards described in Section 202(f)(2).

⁴ Pub. L. 102-385, 106 Stat. 1460 (1992); 47 U.S.C. § 533(a)(2). Subsection 613(a)(2), as adopted in the 1992 Cable Act, was redesignated as 613(a) by Section 202(i)(2) of the 1996 Act.

⁵ See *Report and Order* in MM Docket No. 92-264, 8 FCC Rcd 6828 (1993); *Memorandum Opinion and Order on Reconsideration of the First Report and Order* in MM Docket No. 92-264, 10 FCC Rcd 4654 (1995); 47 CFR §§ 21.912, 76.501.

Commission and appear in Section 76.502 of the rules.⁶

8. Section 301(i) of the 1996 Act eliminates these restrictions. Limitations on the time a local franchise authority has to consider applications to sell or transfer systems are retained.

9. Accordingly, as reflected in the Appendix, we amend the applicable Commission rules to conform them to the new statutory language.⁷


V. ADMINISTRATIVE MATTERS

10. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These rules will not increase or decrease burden hours imposed on the public.

11. Because these rule changes simply conform the Commission's rules to the statute, we find for good cause that compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. See 5 U.S.C. § 553(b)(B). For similar reasons, and because the amendments ease restrictions, compliance with the effective date provision of the Administrative Procedure Act also is unnecessary. 5 U.S.C. § 553(d).

12. Accordingly, pursuant to sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), and Telecommunications Act of 1996, §§ 202 and 301, IT IS ORDERED that the Commission's Rules ARE AMENDED as set forth in the Appendix, EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁶ See *Report and Order* in Docket No. 92-264, 8 FCC Rcd 6828 (1993); *Memorandum Opinion and Order on Reconsideration of the First Report and Order* in Docket No. 92-264, 10 FCC Rcd 4654 (1995); 47 CFR § 76.502.

⁷ Prior to enactment of the 1996 Act, FCC Form 394, Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, was applicable only to applications to assign or transfer cable systems owned for three years or more. This form may now be used for such assignments or transfers without the three-year restriction. Changes to the Form 394 will be made accordingly.

APPENDIX

Parts 21 and 76 of Title 47 of the Code of Federal Regulations are amended to read as follows:

PART 21 -- DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. In Part 21, Section 21.912 is amended by adding a new paragraph (e)(3) to read as follows:

§ 21.912 Cable television company eligibility requirements.

* * * * *

(e)(3) The limitations on cable television ownership in this section do not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

PART 76 -- CABLE TELEVISION SERVICE

3. The authority citation for Part 76 continues to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. § 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614-615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; Sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

4. Section 76.501 is amended by deleting paragraph (b) and marking it "reserved" and by amending paragraph (f) to read as follows:

§76.501 Cross-ownership.

* * * * *

(f) The restrictions in paragraphs (d) and (e) of this section shall not apply to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 623(l) of the Communications Act.

5. Section 76.502 is amended to read as follows:

§ 76.502 Time Limits Applicable to Franchise Authority Consideration of Transfer Applications.

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.